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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/821,752

04/08/2004

William R. Murphy JR.

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EXAMINER

NGUYEN, CHI Q

ART UNIT

PAPER NUMBER

3635

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DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/821,752	<b>Applicant(s)</b> MURPHY ET AL.	
	<b>Examiner</b> CHI Q. NGUYEN	<b>Art Unit</b> 3635	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 February 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-47 is/are pending in the application.
- 4a) Of the above claim(s) 11-14 and 35-47 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10, 15-23 and 34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

This Office action is in response to applicant's amendment and election to species I (claims 1-10 and 15-34) filed on 2/18/2009.

#### ***Status of Claims***

Claims 1-10 and 15-34 are pending.

Claims 11-14 and 42-47 have been withdrawn.

Claims 35-41 have been cancelled.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 6-7, 10, 14, 16-19 and 22-23 are rejected under 35 U.S.C. 102(b) as being anticipated by US Pat. No. 6,324,796 to Heath.

Claim 1:

Heath discloses a sanitary cove base 10 comprising an outer wall 11; an inner wall 12 having an interior surface; wherein said interior surface comprises a sanitary sweep 16 and an abutment surface 22 adapted to abut adjacent flooring (see Fig. 3); a plurality of longitudinally-extending web members 28 existing between said outer wall 11 and said inner wall 12, thereby connecting said outer wall to said inner wall; and a plurality of hollow channels (see Fig. 1), each hollow channel being defined between said inner wall, said outer wall, a first longitudinally-extending web member of said plurality of

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longitudinally-extending web members, and a next adjacent longitudinally-extending web member of said plurality of longitudinally-extending web members.

Claim 6:

Wherein said sanitary cove base further comprises a wall-facing surface of said outer wall; a top surface; and a bottom surface (see Fig. 1).

Claims 7 and 16:

Wherein said interior surface of said inner wall further comprises a sanitary sweep 16; and an abutment surface 22; and wherein said wall-facing surface of said outer wall further comprises a chamfer 19 (Fig. 1); a plurality of adhesive ridges 33; a plurality of relief valleys 31 ; and a wall-contact crest 19.

Claim 10:

Wherein said top surface extends horizontally between said wall-facing surface and said interior surface (Fig. 1).

Claims 17 and 19:

Further comprising a wall-contact crest 14 extending rearwardly from said wall-facing surface of said outer wall, wherein said plurality of relief valleys 31 comprises an upper relief valley, wherein said plurality of sections of adhesive ridges 33 comprises an upper section of adhesive ridges, and wherein said upper relief valley separates said upper section of adhesive ridges from said wall-contact crest (see Figs. 1-2).

Claim 18:

Wherein a top sidewall of said upper relief valley connects said wall-contact crest to a floor of said upper relief valley (see Figs. 1-2).

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Claim 22:

Wherein said hollow channels extend longitudinally through the sanitary cove base.

Claim 23:

Further comprising a first longitudinal end and a second longitudinal end, and wherein said hollow channels extend between said first longitudinal end and said second longitudinal end (see Figs. 1-2).

Claim 34:

Further comprising a first plurality of screw insertion holes 24 through said inner wall 12 and adapted to accept an attachment screw; and a second plurality of buttons, each button being frictionally received in one of said first plurality of screw insertion holes.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-5, 8-9, 15 and 20-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. No. 6,324,796 to Heath.

Heath discloses the claimed invention as stated above but does not disclose expressly wherein said top surface has a width of approximately 0.438 inches, and wherein said abutment surface has a height of approximately 0.500 inches wherein said abutment surface is displaced forwardly from said interior surface of said inner wall by a distance of approximately 0.500 inches, and wherein the sanitary cove base has an overall

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height from said bottom surface to said top surface of approximately 8.0 inches, wherein each adhesive ridge within a first section of adhesive ridges is displaced from a next adjacent adhesive ridge in said first section of adhesive ridges by a distance of approximately 0.125 inches, and wherein said adhesive ridges extend rearwardly from said wall-facing surface of said outer wall approximately 0.063 inches; wherein said sanitary cove base is constructed from material selected from the group consisting of Acrylonitrile-Butadiene-Styrene, polypropylene, high-density polyethylene, and Polyvinyl Chloride; wherein said sanitary cove base is made with the following composition: 98% polyethylene plastic, 1% coloring agent, 1/2% foaming agent, and 1/2% anti-fungal material; wherein said sanitary cove base is milled from a solid block of material and wherein said sanitary cove base is extruded. However, these features would have been a matter of obvious design choice to one of ordinary skill in the art at the time the invention was made to have such a specific dimension for the width, height and distance of the inner wall and desirable material for desirable applications and economic reasons. Furthermore, applicant has not disclosed the criticality of these features.

### ***Allowable Subject Matter***

Claims 24-33 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-10 and 15-23 and 34 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communication from the examiner should be directed to Chi Q. Nguyen whose telephone number is (571) 272-6847. The examiner can normally be reached on Monday-Friday from 7:30 am-4:00 pm.

If attempt to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached at (571) 272-6777.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For

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more information about the PAIR system, see <http://pairedirect.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at (866) 217-9197.

/C. Q. N./  
Examiner, Art Unit 3635

/Richard E. Chilcot, Jr./

Supervisory Patent Examiner, Art Unit 3635